IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICTORIA GRAUDINS 1412 Napfle Avenue Philadelphia, PA 19111 PLAINTIFF	**CIVIL ACTION LAW**
v.	**NO.**
RETRO FITNESS, LLC, t/a RETRO FITNESS 2524 Welsh Road Philadelphia, PA 19152	
Daniel Kraft 2524 Welsh Road Philadelphia, PA 19152	**JURY TRIAL DEMANDED**
Daniel Carr 2524 Welsh Road Philadelphia, PA 19152	
Paul Carr 2524 Welsh Road Philadelphia, PA 19152	
Jim Kenagie 2524 Welsh Road Philadelphia, PA 19152 DEFENDANTS	

COMPLAINT

Plaintiff, by and through her counsel, brings this suit because she has been the victim of sexual harassment, sexual discrimination, the creation and perpetuation of a hostile work environment, negligent supervision, and assault and battery in violation of her civil rights, federal laws, and state laws.

JURISDICTION AND VENUE

1. Because this case involves federal questions and violations of Plaintiff's civil rights, jurisdiction in this Court is asserted under the provisions of 28 U.S.C.

§1331 and §1343.

2. This action arises under Title VII of the provisions of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., the Pennsylvania Human Relations Act, 43 P.S. §§ 951-963, 42 U.S.C. §1983, and the laws of the Commonwealth of Pennsylvania for intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent retention and supervision. This Court has supplemental jurisdiction over the state claims asserted herein pursuant to 28 U.S.C. Section 1367.
3. Jurisdiction in this Honorable Court is appropriate because Plaintiff has exhausted her administrative remedies. Specifically, on March 29, 2011, Plaintiff filed a charge regarding Defendants' conduct with the United States Equal Employment Opportunity Commission (the "EEOC") and the Pennsylvania Human Relations Commission ("PHRC"). A true and correct copy of the Plaintiff's EEOC Charge is attached as Exhibit "A".
4. Plaintiff was subsequently issued a Notice of Right to Sue, which the EEOC mailed on July 29, 2011. A true and correct copy of the Notice of Right to Sue is attached as Exhibit "B".
5. Venue is appropriately laid in this Court pursuant to 28 U.S.C. §1391(b) in that the actions complained of took place in Philadelphia, which is within the bounds of the Eastern District, and Defendants carry on business within the Eastern District.

PARTIES

6. Plaintiff, Victoria Graudins (hereinafter referred to as "Plaintiff"), is an adult female individual residing at 1412 Napfle Avenue, Philadelphia, Pennsylvania.

7. In May 2010, and at all times material hereto, Plaintiff began working as an employee of Retro Fitness, working at the facility located at 224 Welsh Road, Philadelphia, Pennsylvania.

8. Specifically, Plaintiff worked for the Defendant Retro Fitness, LLC t/a Retro Fitness in the childcare and protein shake/juice bar departments.

9. Plaintiff held that position until October 2010, when she was unlawfully terminated by Defendant Retro Fitness, LLC t/a Retro Fitness.

10. Defendant Retro Fitness, LLC t/a Retro Fitness (hereinafter referred to as "Defendant Retro Fitness"), is a limited liability company registered in the Commonwealth of Pennsylvania.

11. Defendant Retro Fitness owns, operates, manages, directs and controls the facility located at 224 Welsh Road, Philadelphia, Pennsylvania ("Facility").

12. The Facility is a "modern gym", i.e. a fitness center.

13. Defendant Daniel Kraft is an adult male individual who at all times material hereto was the owner, franchisee, and manager of Defendant Retro Fitness with a business address at the Facility.

14. Defendant Daniel Carr is an adult male individual who at all times material hereto was an employee of Defendant Retro Fitness in the capacity of the manager of the Facility.

15. Defendant Paul Carr is an adult male individual who at all times material hereto was an employee of Defendant Retro Fitness in the capacity of a salesman.
16. Defendants Daniel Carr and Paul Carr are brothers.
17. Defendant Daniel Carr was Defendant Paul Carr's supervisor.
18. Defendant Jim Kenagie is an adult male individual who at all times material hereto was an employee of Retro Fitness in the capacity of a salesman.
19. At all times relevant hereto, Defendants Kraft and Daniel Carr were Plaintiff's direct supervisors.

FACTS

20. On or about May 2010, through the time of her unlawful termination in October 2010, Plaintiff was harassed, assaulted, and subjected to a hostile work environment at the Facility because she is a female.
21. The sexual harassment Plaintiff endured at the Facility was pervasive and occurred on a daily basis. Specifically, Plaintiff was subjected to sexual innuendos and propositions, sexually explicit discussions, pornographic images, nudity, and unwelcome touching, grabbing, and kissing.
22. The sexual harassment Plaintiff endured affected her working environment and made it hostile, uncomfortable, and extremely stressful.
23. Management knew about and ratified the foregoing sexual harassment, which was done openly, in front of management personnel, and without redirection, discipline, or discouragement.
24. Although this behavior was known to the management, nothing was done to

stop the harassment.

25. Defendants Kraft and Daniel Carr knew about, and were present when the foregoing acts took place on a daily basis and yet they did nothing to intervene, discipline, reprimand, or redirect Defendant Kenagie.

26. Defendant Daniel Carr, the manager of the Facility, told Plaintiff that there was "no such thing as sexual harassment in a gym."

27. Defendant Daniel Carr, the manager of the Facility, told Plaintiff she had to wear clothes that showed her figure.

28. On or about June 18, 2010, as discussed in detail below, Plaintiff was sexually assaulted by Defendant Paul Carr at the workplace during work hours.

29. Plaintiff was working at the Facility when Defendant Paul Carr asked her to come and help him bring drinks from the storage room to the front.

30. Plaintiff entered the storage room and walked toward the back, and when she turned around Defendant Paul Carr had removed his pants, boxers, shoes, and socks. He was completely naked from the waist down.

31. Plaintiff immediately turned around and told him to pull his pants up. Despite this, Defendant Paul Carr then approached Plaintiff from behind and rubbed his genitals against the lower back of Plaintiff.

32. Defendant Paul Carr was laughing and telling Plaintiff to "look how big" he was.

33. Plaintiff then pushed away from Defendant Paul Carr and attempted to leave the storage room; however, he prevented her from leaving, turned off the light, kissed Plaintiff's neck, grabbed her vagina through her dress with one

hand while using the other hand to try and go down her dress to grab her chest.

34. Plaintiff told Defendant Paul Carr to stop and managed to physically push Defendant Paul Carr off of her a second time at which point he laid on the floor of the storage room, naked from the waist down, and told her to stand overtop of his face.

35. Plaintiff then fled the room, reported the incident to her boyfriend via text, and eventually, the police arrived.

36. At not time did Plaintiff give Defendant Paul Carr permission to touch her, or encourage his actions in any way.

37. Plaintiff pressed charges against Defendant Paul Carr for the assault on June 18, 2010.

38. On January 13, 2011, following a bench trial, Defendant Paul Carr was convicted of unlawful restraint, indecent assault, indecent exposure, simple assault, recklessly endangering another person, and false imprisonment. A true and correct copy of the criminal docket is attached as Exhibit "C".

39. Defendant Paul Carr was sentenced to four years probation supervised by the sex offender unit of the probation department, and a stay away order remained in effect as to Plaintiff. Exhibit C; A true and correct copy of the Stay Away Order is attached as Exhibit "D".

40. On or about October 2010, Plaintiff was unlawfully terminated by Defendant in retaliation for pressing charges against Defendant Paul Carr and complaining about the sexual harassment to which she was subjected.

COUNT I – Sexual Discrimination and Harassment under Title VII
Plaintiff v. All Defendants

41. The allegations set forth in the preceding paragraphs are incorporated as though fully set forth herein.

42. Based on the foregoing, Defendants engaged in unlawful practices in violation of Title VII. The said unlawful practices for which Defendants are liable to Plaintiff include, but are not limited to, fostering and perpetuating a hostile and offensive work environment, subjecting Plaintiff to unlawful sexual harassment, failing to properly investigate sexual harassment in the workplace, failing to cause sexual harassment in the workplace to cease, and retaliating against Plaintiff for reporting sexual harassment and prosecuting Defendant Paul Carr for sexual assault resulting in economic and emotional loss.

43. By the actions of its employees and management, Defendant Retro Fitness unlawfully discriminated against Plaintiff on the basis of gender/sex in terms and conditions of her employment by allowing severe and pervasive sexual harassment in the workplace, retaliating against her for complaining about sexual discrimination and harassment and discharging her because of her because of her sex and her complaints of sexual harassment in violation of Title VII, 42 U.S.C. Section 2000 et seq., resulting in economic and emotional loss.

COUNT II – Retaliation
Plaintiff v. All Defendants

44. The allegations set forth in the preceding paragraphs are incorporated as though fully set forth herein.

45. While employed by Defendant Retro Fitness, Plaintiff opposed harassment, discrimination and retaliation against herself, including but not limited to pressing charges against Defendant Paul Carr, activities protected by the federal equal opportunity laws.

46. As a result of Plaintiff's opposition to harassment, discrimination, and retaliation and her participation in protected activity, Defendants illegally terminated her employment.

47. Plaintiff was and continues to be damaged by Defendants unlawful retaliation, including but not limited to lost wages and benefits, lost opportunities, loss of damage to her reputation, and mental, physical pain, suffering and anguish.

COUNT III – Sexual Discrimination and Harassment under
43 P.S. Section 953, et seq.
Plaintiff v. All Defendants

48. The allegations set forth in the preceding paragraphs are incorporated as though fully set forth herein.

49. Based on the foregoing, Defendants engaged in unlawful discriminated against Plaintiff on the basis of her gender/sex in violation of Pennsylvania law, 43 P.S. Section 953, et seq., by allowing severe and pervasive sexual harassment, by creating a sexually hostile environment, for subjecting Plaintiff to sexual harassment, for discharging her on the basis of her gender and her report of sexual harassment in violation of Pennsylvania law.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
PLAINTIFF VS. ALL DEFENDANTS

50. The allegations set forth in the preceding paragraphs are incorporated as though fully set forth herein.

51. By the actions its Defendants, Defendants' employees, and Defendants' management, Defendants intentionally, negligently, and tortuously inflicted emotional distress on the Plaintiff, Victoria Graudins.

52. Plaintiff continues to struggle to recover from the emotional distress which the assault and harassment caused her.

COUNT V – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
PLAINTIFF VS. ALL DEFENDANTS

53. The allegations set forth in the preceding paragraphs are incorporated as though fully set forth herein.

54. By the actions its Defendants, Defendants' employees, and Defendants' management, Defendants intentionally, negligently, and tortiously inflicted emotional distress on the Plaintiff, Victoria Graudins.

55. Plaintiff continues to struggle to recover from the emotional distress which the assault and harassment caused her.

COUNT VI – NEGLIGENT SUPERVISION
PLAINTIFF VS. DEFENDANTS RETRO FITNESS, DANIEL KRAFT, AND DANIEL CARR

56. The allegations set forth in the preceding paragraphs are incorporated as though fully set forth herein.

57. Defendants' negligent, careless, and reckless acts include the following:

    a. Failing to supervise and/or failing to adequately supervise Defendants Daniel Carr, Paul Carr, and Jim Kenagie;

    b. Failing to have in place adequate, appropriate corporate or business policies, procedures, and practices to prevent, discourage, or address sexual harassment in the workplace;

c. Failing to adhere to adequate, appropriate corporate or business policies, procedures, and practices to prevent, discourage, or address sexual harassment in the workplace;

d. Failing to supervise and/or failing to adequately supervise their employees;

e. Negligently permitting the harmful and illegal acts of Defendants' employees to take place and/or continue;

f. Negligently failing to provide Plaintiff with any assistance in coping with the ongoing harassment, discrimination, and injuries;

g. Failing to make reasonably safe the Facility possessed, owned and/or controlled by Defendants, leading to the harm suffered by Plaintiff;

h. Permitting or failing to prevent tortuous conduct by employee Paul Carr upon premises which were under Defendants' control and/or supervision;

i. Negligent supervision of the property; and

j. Negligent supervision of employees, managers, and supervisors.

58. As a proximate and direct result of Defendants' negligent conduct, described above, Plaintiff was harmed and sustained physical and emotional injuries and this has resulted in pain, suffering, embarrassment, humiliation, mental anguish and loss of enjoyment of life and life's pleasures to Plaintiffs.

59. By its actions, Defendants intentionally, negligently, and tortuously inflicted emotional distress on the Plaintiff, Victoria Graudins.

60. Plaintiff continues to struggle to recover from the emotional distress which the assault and harassment caused her.

COUNT VII – ASSAULT & BATTERY
PLAINTIFF VS. DEFENDANT PAUL CARR

61. The allegations set forth in the preceding paragraphs are incorporated as though fully set forth herein.

62. The aforementioned sexual assault and battery was caused by Defendant Paul Carr an employee, agent, servant and workmen of the Defendant Retro Fitness.

63. As a result of the aforementioned incident, Plaintiff sustained serious and permanent injury.

64. As a result of the aforementioned incident, Plaintiff was caused to sustain serious and permanent injuries including but not limited to injuries to: psychological impairment and mental anguish, which have caused and will continue to cause a great deal of embarrassment, humiliation, suffering, agony, inconvenience, and which may be permanent in nature and character.

WHEREFORE, based on the foregoing, Plaintiff demands judgment against all Defendants, individually, jointly, and severally, for the following relief:

a. punitive damages to which Plaintiff proves she is entitled;

b. damages for past, present, and future pain and suffering, emotional pain and suffering, inconvenience, loss of enjoyment of life, and any other compensatory damages, together with all costs of suit and other remedies allowed by law;

c. interest in the maximum amount allowed by law;

d. attorney's fees and costs in the maximum amount allowed by law;

e. an injunction permanently and forever prohibiting and restraining Defendants or Defendants' employees from any and all harassment, discrimination, and retaliation directed at the Plaintiff;

f. an injunction permanently and forever prohibiting and restraining Defendants or Defendants' employees from engaging in actions or practices the discriminate or retaliate against any current, former, or future employees because of their gender or their participation in this lawsuit; and

g. such other and further relied as the Court deems just.

JURY DEMAND

65. Plaintiff hereby demands a jury trial.

HILL & ASSOCIATES, P.C.

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Date: